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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

DERRICK B. HINES,

Plaintiff and Appellant,

v.

CLAIRE C. HINES,

Defendant and Respondent.

A135365

**(Alameda County
Super. Ct. No. RP08396703)**

MEMORANDUM OPINION^{*}

Appellant Derrick B. Hines (Derrick) was trustee of the Hines Family Trust (the Trust). Respondent Claire C. Hines (Claire), a remainder beneficiary of the Trust, filed a petition to remove Derrick as trustee. On April 2, 2009, the Alameda County Superior Court granted Claire's petition and removed Derrick as trustee "due to his breach of the trust, his failure to perform his fiduciary duties under the trust, and other good cause."

After the superior court's order, Derrick refused to vacate one of the Trust's properties. Claire instituted eviction proceedings in civil court, and Derrick was ordered evicted.

On August 29, 2011, Claire filed a petition requesting, among other relief, imposition of a surcharge against Derrick's share of the Trust estate. The superior court held an evidentiary hearing on the petition March 26 and 27, 2012, at which both Derrick

^{*} We resolve this case by a Memorandum Opinion pursuant to California Standards of Judicial Administration, Standard 8.1.

and Claire testified. On March 28, 2012, the court approved the petition and ordered that Derrick be surcharged \$330,366.66 with compound interest. On May 3, 2012, the superior court filed a written order approving the surcharge and interest against Derrick's share of the Trust estate.

Derrick filed a notice of appeal from that order the following day. On May 25, 2012, Derrick filed Judicial Council form APP-003, "Appellant's Notice Designating Record on Appeal." Derrick checked the box in section 2(a) of the form and elected to proceed without a record of oral proceedings in the superior court. Next to the checked box appears the following statement: "I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings."

As appellant, it is Derrick's "affirmative duty to show error by an adequate record" (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435) and to "formulate a coherent legal argument" (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3), but he has done neither. The record contains no reporter's transcript, and in violation of California Rules of Court, rule 8.204(a)(1)(C), Derrick's opening brief is devoid of *any* citations to the clerk's transcript, which is the only record before us. Derrick is not excused from compliance with this rule merely because he is unrepresented by counsel. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [self-represented party required to comply with rule governing record citation].)

Moreover, the arguments Derrick presents in his briefs are not coherent enough to merit consideration. (See *People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2 [court will consider only "those arguments that are sufficiently developed to be cognizable"].) His opening brief is extremely difficult to understand, but insofar as we can discern, he appears to challenge the lower court's failure to consider certain evidence before imposing the surcharge against his share of the Trust estate. These claimed facts would seem to include the poor condition of the premises from which he was evicted and the alleged existence of a rental agreement between Derrick and "the deceased mother."

Such factual matters appear to raise issues of the sufficiency of the evidence to support the challenged order. (See *Nwosu v. Uba*, *supra*, 122 Cal.App.4th at pp. 1245-1246.)

Because Derrick failed to include in the record the reporter's transcript of the evidentiary hearing based on which the superior court imposed the surcharge, "the judgment must be *conclusively presumed correct* as to *all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992 [rejecting challenge to award of surcharge and attorney fees in probate proceeding].) Derrick is therefore precluded from raising any challenge to the sufficiency of the evidence. (*Ibid.*) As no error is apparent on the face of the existing appellate record (*ibid.*), and the law is clear that a beneficiary's interest in a trust may be used to satisfy a surcharge based on the beneficiary's wrongful conduct as trustee (*Chatard v. Oveross* (2009) 179 Cal.App.4th 1098, 1110), we are compelled to affirm the order from which the appeal is taken.

To the extent Derrick seeks to raise issues arising out of his eviction from the Trust property, those matters are not before us because they were not decided in the probate proceeding below. Nor may we entertain Derrick's apparent claims of ineffective assistance of counsel. There is no authority that would permit us to reverse a judgment or order in a civil proceeding on the grounds of ineffective assistance of counsel. (See *Chevalier v. Dubin* (1980) 104 Cal.App.3d 975, 978-979.)

DISPOSITION

The May 3, 2012 order approving surcharges and compound interest against the share of Derrick B. Hines is affirmed. Claire C. Hines shall recover her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.